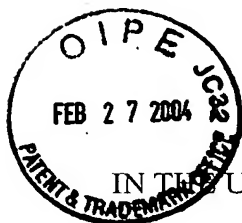


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#8/Brief

Customer No. 23643

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Confirmation No.: 6528

Application No.: 10/016,596

Invention: METHOD AND APPARATUS FOR
ADJUSTING AND POSITIONING
AIR CAPS

Inventor: Baltz et al.


Filed: October 30, 2001

Attorney
Docket: 3030-67663

Examiner: Davis D. Hwu

Certificate Under 37 CFR 1.8(a)

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APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal brief is submitted in triplicate in furtherance of the appeal taken January 21, 2004. The Commissioner is hereby authorized to charge the \$330 fee for filing this appeal brief, as well as any other fees which may be necessary to constitute this a timely filed appeal brief, to Appellants' undersigned counsel's deposit account 10-0435, with reference to file number 3030-67663. A duplicate copy of this authorization is enclosed for this purpose.

Real Party In Interest

The real party in interest is Illinois Tool Works Inc., by virtue of an assignment recorded October 30, 2001 in the records of the Patent and Trademark Office on patent record reel 012384, beginning at frame 0926.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

Claims 1-19 are in this application. Of these, claims 1, 9, 10, 13, 16 and 17 are finally rejected. The Examiner indicated that claims 2-8, 11, 12, 14, 15, 18 and 19 contained allowable subject matter, and would be allowed if rewritten in independent form including all of the limitations of their respective base claims and any intervening claims. The final rejection of claims 1, 9, 10, 13, 16 and 17 are appealed.

Status of Amendments

No amendments were filed subsequent to final rejection.

Summary of the Invention

The invention may best be understood by referring to the following copies of appealed claims 1, 9, 10, 13, 16 and 17, annotated with parenthetical reference numbers and related notes from the detailed description.

With reference to claim 1, the invention is a device (10) for positioning an air cap (12) of a pneumatically aided atomizer (14), the air cap (12) having air horns (16) extending therefrom, the device (10) providing at least one first opening (56 or 58) adapted to receive the horns (16) and a first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in a first orientation (with level 50 or 52 indicating level).

With reference to claim 9, the invention is the device (10) of claim 1 wherein the first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in the first orientation is a first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in a vertical orientation (with level 50 or 52 indicating level).

With reference to claim 10, the invention is the device (10) of claim 1 wherein the first level (50 or 52) for indicating when the horns (16) received in the at least one first

opening (56 or 58) are in the first orientation is a first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in a horizontal orientation (with level 50 or 52 indicating level).

With reference to claim 13, the invention is a method of positioning an air cap (12) of a pneumatically aided atomizer (14), the air cap (12) having air horns (16) extending therefrom, the method including providing a device (10) having at least one first opening (56 or 58) adapted to receive the horns (16) and a first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in a first orientation (with level 50 or 52 indicating level).

With reference to claim 16, the invention is the method of claim 13 wherein providing a device (10) having at least one first opening (56 or 58) adapted to receive the horns (16) and a first level (50 or 52) for indicating when the horns (16) received in the at least one first opening (56 or 58) are in a first orientation includes providing a device (10) having a first surface (40) extending (sic--facing) generally in a first direction when the horns (16) are received in the at least one first opening (56 or 58) and a second surface (42) extending (sic--facing) generally in a second direction opposite the first direction when the horns (16) are received in the at least one first opening (56 or 58).

With reference to claim 17, the invention is the method of claim 16 wherein providing a device (10) having at least one first opening (56 or 58), a first surface (40) extending (sic--facing) generally in a first direction when the horns (16) are received in the at least one first opening (56 or 58) and a second surface (42) extending (sic--facing) generally in a second direction opposite the first direction when the horns (16) are received in the at least one first opening (56 or 58) together include providing at least one first opening (56 or 58) which extends through the device (10) from the first surface (40) to the second surface (42).

Issues

The issue on appeal is whether claims 1, 9, 10, 13, 16 and 17 lack novelty under 35 U.S.C. § 102(b) as being anticipated by Fritz U.S. Patent No. 5,344,078 (hereinafter Fritz).

Grouping of Claims

All of claims 1, 9, 10, 13, 16, and 17 are believed to be separately patentable, and patentable over Fritz, at least for the reasons set forth in the following arguments.

Argument

In the final official action of October 21, 2003 the Examiner rejected claims 1, 9, 10, 13, 16 and 17 under 35 U.S.C. § 102(b) as anticipated by Fritz.

The Examiner takes the position that Fritz

“shows a device 20 for positioning an air cap 11 of a pneumatically aided atomizer, the air cap having horns 46 and 47 extending therefrom, the device providing at least one first opening adapted to receive the horns and a first level (see Figure 1) for indicating when the horns received in the at least one first opening are in a first orientation. The device includes a first surface extending generally in a first direction when the horns are received in the at least one first opening and a second surface extending generally in a second direction opposite the first direction when the horns are received in the at least one first opening as recited in claim 4 (sic). Regarding claims 9 and 10, the vertical and horizontal orientations as recited are strictly based on a perspective view of the device of Fritz et al. Fritz et al. also shows the method as recited in claim 13.”

The final rejection, paragraph 4.

Analysis of the Reference

Fritz teaches a nozzle assembly 10 for a high air volume-low air pressure, or HVLP, paint spray gun. Fritz provides, in pertinent part, that

“[T]he nozzle assembly 10 includes an air cap 11, a fluid tip 12, and an air distribution baffle 13. The nozzle assembly 10 is shown secured to an internally threaded tube 14 which extends from a front end 15 of a spray gun body 16. The nozzle assembly 10 is secured to the spray gun body 16 by positioning the baffle 13 over the tube 14 in alignment with the front end 15 of the gun body 16 and screwing an externally threaded end 17 on the fluid tip 12 into the tube 14. A radial flange 18 on the fluid tip 12 clamps the baffle to the gun body end 15. The baffle 13 has a threaded perimeter 19. The air cap 11 is aligned and secured to the fluid (sic--tip) 12 by a retainer ring 20 which is threaded onto the baffle perimeter 19.”

Fritz, col. 3, lines 25-40.

Fritz's air cap 11 includes two air horns 46 and 47 which extend from diametrically opposite sides of the air cap 11. Two orifices 48 and 49 for discharging pattern shaping air are formed on each air horn 46 and 47. Fritz, col. 5, lines 10-12.

Claim 1

Appellants' claim 1 requires a first level for indicating when the horns received in the at least one first opening of the device are in a first orientation. Fritz neither discloses nor suggests a level anywhere within Fritz's figures, specification or claims.

Claim 9

Claim 9 depends from claim 1 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 9 requires that the first level indicate when the horns received in the at least one first opening are in a vertical orientation. Fritz neither discloses nor suggests a level which indicates when the air horns are in a vertical orientation.

Claim 10

Claim 10 depends from claim 1 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Additionally, claim 10 requires that the first level indicate when the horns received in the at least one first opening are in a horizontal orientation. Fritz neither discloses nor suggests a level which indicates when the air horns are in a horizontal orientation.

Claim 13

Appellants' claim 13 requires a providing a device having a first level for indicating when the horns received in the at least one first opening of the device are in a first orientation. Fritz neither discloses nor suggests a method for positioning an air cap including providing a device having a level for indicating when the air horns of the air cap received in the device are in a first orientation.

Claim 16

Claim 16 depends from claim 13 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Additionally, claim 16 requires providing a device having a first surface extending (sic--facing) generally in a first direction when the horns are received in the at least one first opening and a second surface extending (sic--facing) generally in a second direction opposite the first direction when the horns are received in the at least one first opening. Fritz neither discloses nor suggests providing a device having a first surface extending (sic--facing) generally in a first direction when the horns are received in the at least one first opening provided in the device and a second surface

extending (sic--facing) generally in a second direction opposite the first direction when the horns are received in the at least one first opening.

Claim 17

Claim 17 depends from claim 16 which depends from claim 13 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Additionally, claim 17 requires that providing the device of claims 13 and 16 includes providing at least one first opening which extends through the device from the first surface to the second surface. Fritz neither discloses nor suggests providing a device having a first surface extending (sic--facing) generally in a first direction when the horns are received in the at least one first opening provided in the device and a second surface extending (sic--facing) generally in a second direction opposite the first direction when the horns are received in the at least one first opening, wherein the at least one first opening extends through the device from the first surface to the second surface.

Summary

Claim 1 specifically recites a “level for indicating when the horns received in the at least one first opening are in a first orientation.” Claim 9 specifically recites a “level for indicating when the horns received in the at least one first opening are in a vertical orientation.” Claim 10 specifically recites a “level for indicating when the horns received in the at least one first opening are in a horizontal orientation.” Claim 13 specifically recites, “a first level for indicating when the horns received in the at least one first opening are in a first orientation.” Claim 16 specifically recites “providing a device having a first surface extending (sic--facing) generally in a first direction when the horns are received in the at least one first opening and a second surface extending (sic--facing) generally in a second direction opposite the first direction when the horns are received in the at least one first opening.” Claim 17 specifically recites “providing at least one first opening which extends through the device from the first surface to the second surface.” Neither the word “level,” nor any description of any function of a level, nor any of the other above-quoted structural and functional language from the rejected claims appears anywhere in Fritz. Accordingly, Appellants submit that the 35 U. S. C. § 102 rejection of claims 1, 9, 10, 13, 16 and 17 based upon Fritz is erroneous, and should be reversed. Such action is respectfully requested.

Respectfully submitted,



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Appendix--The Claims On Appeal

1. A device for positioning an air cap of a pneumatically aided atomizer, the air cap having air horns extending therefrom, the device providing at least one first opening adapted to receive the horns and a first level for indicating when the horns received in the at least one first opening are in a first orientation.

9. The device of claim 1 wherein the first level for indicating when the horns received in the at least one first opening are in the first orientation is a first level for indicating when the horns received in the at least one first opening are in a vertical orientation.

10. The device of claim 1 wherein the first level for indicating when the horns received in the at least one first opening are in the first orientation is a first level for indicating when the horns received in the at least one first opening are in a horizontal orientation.

13. A method of positioning an air cap of a pneumatically aided atomizer, the air cap having air horns extending therefrom, the method including providing a device having at least one first opening adapted to receive the horns and a first level for indicating when the horns received in the at least one first opening are in a first orientation.

16. The method of claim 13 wherein providing a device having at least one first opening adapted to receive the horns and a first level for indicating when the horns received in the at least one first opening are in a first orientation includes providing a device having a first surface extending generally in a first direction when the horns are received in the at least one first opening and a second surface extending generally in a second direction opposite the first direction when the horns are received in the at least one first opening.

17. The method of claim 16 wherein providing a device having at least one first opening, a first surface extending generally in a first direction when the horns are received in the at least one first opening and a second surface extending generally in a second direction opposite the first direction when the horns are received in the at least one first opening together include providing at least one first opening which extends through the

device from the first surface to the second surface.